

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JAMES G. FREER,

Plaintiff,

v.

Case No. 10-C-6

MARGUERITE M. MOELLER and
BARBARA B. CRABB,

Defendants.

ORDER

Plaintiff James Freer, an inmate at Waupun Correctional Institution, filed this action under 42 U.S.C. § 1983. Freer named as defendants United States District Judge Barbara Crabb and Marguerite Moeller, an Assistant Attorney General for the State of Wisconsin. The Court screened the complaint under 28 U.S.C. § 1915A(a) and dismissed the case as frivolous under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). (Doc. # 10.) Judgment was entered on January 11, 2009. Freer has since filed two motions with the Court. The first is a “Writ of Error Motion to Correct the Record,” in which Freer appears to take issue with the fact that Attorney Moeller was listed as a defendant in the Court’s order dismissing this case. (Doc. # 12.) Whatever Freer’s contention now regarding whom he really intended to sue, his complaint does name both Judge Crabb and Attorney Moeller as defendants. Thus, Freer’s motion will be denied.

Freer’s second motion is a “Motion to Recall the Mandate/Order Stay and Abeyance,” in which Freer appears to contend that because he was attempting to advance a constitutional challenge to a Wisconsin statute, the Court failed to observe Fed. R. Civ. P. 5.1 and 28 U.S.C. § 2403 in

dismissing his case. (Doc. # 13.) Freer maintains that the Court should certify under 28 U.S.C. § 2403 to the Attorney General for the State of Wisconsin that Wis. Stat. § 977.05 has been questioned. This motion will also be denied, as the Court concluded in dismissing this matter that both defendants in this matter were entitled to absolute immunity, rendering frivolous Freer's complaint. Further, even if the complaint called into question the constitutionality of a Wisconsin statute, 28 U.S.C. § 2403(b) does not require the district court to certify the fact a state statute has been challenged when a state's officer or employee is named as a party, and one of the two defendants Freer named in his complaint is an employee of the State of Wisconsin.

THEREFORE, IT IS ORDERED that Freer's motions [Docs. # 12, 13] are **DENIED**.

IT IS FURTHER ORDERED that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated this 26th day of January, 2010.

s/ William C. Griesbach
William C. Griesbach
United States District Judge